

**THE MINUTES OF THE HOUSE STANDING COMMITTEE
ON
JUDICIARY**

Wednesday, September 14, 2005 10:30 a.m.

Room 308 House Office Building

The House Standing Committee on Judiciary was called to order by **Representative William Van Regenmorter**, Chair.

MEMBERS PRESENT: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, Adamini, McConico, Bieda and Virgil Smith.

MEMBERS ABSENT/EXCUSED: Representatives Stakoe and Jones.

Representative Nofs moved to adopt the minutes of the **August 24, 2005** meeting. The motion was supported by **Representative David Law**. There being no objection, the motion prevailed by unanimous consent.

Chairman Van Regenmorter laid **HB 4577** before the committee:

HB 4577 David Law	Human services; fraud; enforcement of medicaid whistleblower protection; provide for.
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TESTIMONY

Representative David Law, sponsor of HB 4577, explained his bill to the committee.

Wallace Hart, Assistant Attorney General, Office of the Attorney General, testified in support of the bill.

Carl Alden, representing the Michigan Chiropractic Society, submitted a card in opposition to the bill and did not wish to speak.

Jackie Doig, representing the Center for Civil Justice, testified in support of the bill.

Doug Borruso, representing the Michigan Osteopathic Association, submitted a card in opposition to the bill and did not wish to speak.

Colin Ford, representing the Michigan State Medical Society (MSMS), submitted a card in opposition to the bill and did not wish to speak.

The **Michigan Nurses Association** indicated a position of support on the bill and were unable to testify.

Representative Schuitmaker moved to adopt the substitute (**H-2**) to **HB 4577**. The motion was supported by **Representative David Law**.

The motion prevailed by a vote of **12-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Adamini, McConico, Bieda and Virgil Smith,

Nays: None,

Pass: None.

Chairman Van Regenmorter laid **HB 4968** before the committee:

HB 4968 Schuitmaker Probate; wills and estates; miscellaneous amendments to the estates and protected individuals code; enact.

TESTIMONY

Representative Schuitmaker, sponsor of HB 4968, explained her bill to the committee.

John Martin, representing the Probate and Estate Planning Council, testified in support of the bill.

Pat McCollough, representing the Michigan Probate Judges Association, submitted a card in support of the bill and did not wish to speak.

Representative Newell moved to adopt the substitute (**H-1**) to **HB 4968**. The motion was supported by **Representative Bieda**.

The motion prevailed by a vote of **13-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, Adamini, McConico, Bieda and Virgil Smith,

Nays: None,

Pass: None.

Representative Schuitmaker moved to adopt the following amendments to **HB 4968 (H-1)**. The motion was supported by **Representative Newell**.

1. Amend page 20, line 1, after the first "or" by striking out "another" and inserting "**OTHER**".

2. Amend page 21, line 17, after the second "**THE**" by striking out "**TRUSTEE**" and inserting

"PERSONAL REPRESENTATIVE".

3. Amend page 31, line 11, after the first "or" by striking out "another" and inserting **"OTHER"**.

4. Amend page 33, line 5, after **"THE"** by striking out **"TRUSTEE"** and inserting **"CONSERVATOR"**.

The motion prevailed by a vote of **13-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, Adamini, McConico, Bieda and Virgil Smith,

Nays: None,

Pass: None.

Representative Schuitmaker moved to adopt the following amendment to **HB 4968 (H-1)**. The motion was supported by **Representative Lipsey**.

1. Amend page 29, following line 11, by inserting:

"Sec. 5301. (1) If serving as guardian, the parent of an unmarried legally incapacitated individual may appoint by will, or other writing signed by the parent and attested by at least 2 witnesses, a guardian for the legally incapacitated individual. If both parents are dead or the surviving parent is adjudged legally incapacitated, a parental appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having the care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will **CONTAINING THE NOMINATION** is probated or, ~~in the case of~~ **IF THE NOMINATION IS CONTAINED IN** a nontestamentary nominating instrument ; **OR THE TESTATOR WHO MADE THE NOMINATION IS NOT DECEASED, WHEN THE GUARDIAN'S ACCEPTANCE IS FILED** in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4). If both parents are dead, an effective appointment by the parent who died later has priority.

(2) If serving as guardian, the spouse of a married legally incapacitated individual may appoint by will, or other writing signed by the spouse and attested by at least 2 witnesses, a guardian of the legally incapacitated individual. The appointment becomes effective when, after having given 7 days' prior written notice of intention to do so to the legally incapacitated individual and to the person having care of the legally incapacitated individual or to the nearest adult relative, the guardian files acceptance of appointment in the court in which the will **CONTAINING THE NOMINATION** is probated or, ~~in the case of~~ **IF THE NOMINATION IS CONTAINED IN** a nontestamentary nominating instrument ; **OR THE TESTATOR WHO MADE THE NOMINATION IS NOT DECEASED, WHEN THE GUARDIAN'S ACCEPTANCE IS FILED** in the court at the place where the legally incapacitated individual resides or is present. The notice must state that the appointment may be terminated by filing a written objection in the court as provided by subsection (4).

(3) An appointment effected by filing the guardian's acceptance under a will probated in the

state of the decedent's domicile is effective in this state.

(4) Upon the filing of the legally incapacitated individual's written objection to a guardian's appointment under this section in either the court in which the will was probated or, for a nontestamentary nominating instrument **OR A TESTAMENTARY NOMINATING INSTRUMENT MADE BY A TESTATOR WHO IS NOT DECEASED**, the court at the place where the legally incapacitated individual resides or is present, the appointment is terminated. An objection does not prevent appointment by the court in a proper proceeding of the parental or spousal nominee or another suitable person upon an adjudication of incapacity in a proceeding under sections 5302 to 5317."

The motion prevailed by a vote of **13-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, Adamini, McConico, Bieda and Virgil Smith,

Nays: None,

Pass: None.

The committee returned to the consideration of **HB 4577**.

Representative David Law moved to report **HB 4577** with recommendation, as substitute (**H-2**). The motion was supported by **Representative Nofs**.

The motion prevailed by a vote of **13-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, Adamini, McConico, Bieda and Virgil Smith,

Nays: None,

Pass: None.

The committee returned to the consideration of **HB 4968**.

Representative Condino moved to report **HB 4968** with recommendation, as substitute (**H-2**). The motion was supported by **Representative Elsenheimer**.

The motion prevailed by a vote of **13-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, Adamini, McConico, Bieda and Virgil Smith,

Nays: None,

Pass: None.

Chairman Van Regenmorter laid **HB 4335** before the committee:

HB 4335 Newell Law enforcement; training; waiver of certain recertification requirements for law enforcement officers who return from duty after military service; provide for.

TESTIMONY

Sgt. Matt Bolger, representing the Michigan State Police, submitted a card in support of the bill and did not wish to speak.

Representative Nofs moved to adopt the substitute (H-1) to **HB 4335**. The motion was supported by **Representative David Law**.

The motion prevailed by a vote of **11-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, McConico and Bieda,

Nays: None,

Pass: None.

Representative Newell moved to adopt the following amendments to **HB 4335 (H-1)**. The motion was supported by **Representative Nofs**.

1. Amend page 3, line 23, after "**35.1212.**" by inserting:

"THIS SUBSECTION DOES NOT APPLY TO A COMMISSION CERTIFIED LAW ENFORCEMENT OFFICER WHO IS DISHONORABLY DISCHARGED FROM A TERM OF ACTIVE MILITARY SERVICE."

1. Amend page 3, line 23, after "**35.1212.**" by inserting:

"THIS SUBSECTION DOES NOT APPLY TO A COMMISSION CERTIFIED LAW ENFORCEMENT OFFICER WHO VOLUNTEERS FOR A TERM OF ACTIVE MILITARY SERVICE OR WHO VOLUNTARILY EXTENDS A TERM OF ACTIVE MILITARY SERVICE THAT BEGAN WHEN HE OR SHE WAS CALLED TO ACTIVE DUTY."

The motion prevailed by a vote of **11-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, McConico and Bieda,

Nays: None,

Pass: None.

Representative Newell moved to report **HB 4335** with recommendation, as substitute (H-2). The motion was supported by **Representative Nofs**.

The motion prevailed by a vote of **11-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, McConico and Bieda,

Nays: None,

Pass: None.

Chairman Van Regenmorter laid **HB 4327** before the committee:

HB 4327 Waters Criminal procedure; expunction; record expungement for certain offenders; provide for.

TESTIMONY

Elizabeth Lyon, representing the State Bar of Michigan, submitted a card in support of the bill and did not wish to speak.

Lorraine, mother of a first degree CSC sex offender, testified in support of the bill.

Matt Hanley, representing the Michigan Bankers Association, testified in opposition to the bill.

Representative Bieda moved to adopt the substitute **(H-3)** to **HB 4327**. The motion was supported by **Representative Condino**.

The motion prevailed by a vote of **12-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, McConico, Bieda and Virgil Smith,

Nays: None,

Pass: None.

Representative Bieda moved to adopt the following amendment to **HB 4327 (H-3)**. The motion was supported by **Representative Virgil Smith**.

1. Amend page 7, following line 16, by inserting:

“Enacting section 1. This amendatory act takes effect January 1, 2006.”

The motion prevailed by a vote of **12-0-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Elsenheimer, David Law, Rocca, Lipsey, Condino, McConico, Bieda and Virgil Smith,

Nays: None,

Pass: None.

Representative Lipsey moved to report **HB 4327** with recommendation, as substitute **(H-4)**. The motion was supported by **Representative Condino**.

The motion prevailed by a vote of **10-2-0**.

FAVORABLE ROLL CALL:

Yeas: Representatives Van Regenmorter, Schuitmaker, Newell, Nofs, Rocca, Lipsey, Condino, McConico, Bieda and Virgil Smith,

Nays: Representatives Elsenheimer and David Law,

Pass: None.

Representative Bieda moved to excuse absent members from committee. The motion was supported by **Representative Condino**. There being no objection, the motion prevailed by unanimous consent.

There being no further business to come before the committee, the Chair adjourned the meeting at 11:55 a.m.

Representative William Van Regenmorter, Chair
House Standing Committee on Judiciary
Malika Abdur-Rashid
Committee Clerk
517-373-7256
1 hr. 55 minutes